

097.1 DPWH
07-14-2017

**JOINT CIRCULAR OF THE DEPARTMENT OF ENERGY (DOE)
AND THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH)**

NO. 01 SERIES OF 2017

**PRESCRIBING THE UNIFORM GUIDELINES AND PROCEDURES FOR THE PROPER
PAYMENT OF COMPENSATION AND/OR RECOVERY OF COST IN THE EVENT OF THE
NEED TO RELOCATE THE ELECTRIC COOPERATIVE
DISTRIBUTION/SUBTRANSMISSION LINES FOR THE PRIMARY PURPOSE OF THE
GOVERNMENT**

WHEREAS, pursuant to Section 9 of Republic Act (RA) No. 10531, otherwise known as the "*National Electrification Administration Reform Act of 2013*", section 16(j) of Presidential Decree (PD) No. 269 was duly amended as follows:

"Section 16. *Powers*. A cooperative is hereby vested with all powers necessary or convenient for the accomplishment of its corporate purposes and capable of being delegated by the President or the National Assembly when it comes into existence; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained, nor to limit any such grant to a power or powers of the same class as those so enumerated. Such powers shall include, but not be limited to, the power:

(j) To construct, acquire, own, operate and maintain electric subtransmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways. **In the event of the need of such lands and thoroughfares for the primary purpose of the government, the electric cooperative shall be properly compensated;**" (Boldfacing supplied)

WHEREAS, pursuant to Section 16 of RA 10531, the DOE issued Department Memorandum Circular DC-2013-07-0015 otherwise known as the "*Implementing Rules and Regulations (IRR) of RA 10531*";

WHEREAS, under Section 10(a) of the said IRR, the DOE and the DPWH are mandated to issue within one hundred eighty (180) days from the effectivity of the IRR, a joint circular to carry out the proper compensation for Electric Cooperatives (ECs) in the event that its distribution and/or sub-transmission facilities are relocated as a result of a government project;

WHEREAS, pending the issuance of the joint circular, the DOE issued a Department Circular No. DC 2015-06-011 prescribing the "*Interim Uniform Guidelines and Procedures for the Recovery of Just Compensation in the event of Relocation by ECs of their distribution and/or sub-transmission lines as a result of any Government and/or Non-Government Projects*";

WHEREAS, there is a need to issue this Joint Circular as uniform guidelines for the determination of "*proper compensation*" as stated in Section 9 of RA 10531.

NOW THEREFORE, pursuant to Section 10(a) of the IRR of RA 10531, the DOE and the DPWH hereby jointly issue, adopt and promulgate the following:

Section 1. Title - This Joint Circular shall be known as the "*DOE-DPWH Joint Guidelines for Payment of Compensation/Recovery Cost of Electric Cooperatives*".

Section 2. Scope and Application - This Joint Circular shall apply to all existing and/or future facilities and assets owned by ECs directly related to distribution or sub-transmission lines located along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways, that require relocation as a result of the implementation of a national or government project after the effectivity of RA 10531.

Section 3. Definition of Terms – For purposes of this Joint Circular, the following terms are defined as follows:

- a. **Affected Facility** – a Facility that requires relocation as a result of the implementation of a Government Project;
- b. **DOE** - the Department of Energy, the government agency duly existing and created under RA 7638, as amended;
- c. **DPWH** – the Department of Public Works and Highways, the government agency duly created and existing under Executive Order No. 292 or the 1987 Administrative Code of the Philippines;
- d. **Electric Cooperative (EC)** - an electric distribution utility organized and registered pursuant to PD 269 (as amended);
- e. **Facility** – electric poles, guy supports, wires, insulators and other assets directly related to, or necessary in, the distribution/subtransmission of electricity;
- f. **Implementing Agency (IA)** – any department, bureau, office, commission, authority or agency of the national government, any government-owned or controlled corporation, state college or university, authorized by law or its charter to undertake government projects including LGUs;
- g. **LGU** – a local government unit duly created and existing under RA 7160;
- h. **Government Project** – all national government infrastructure and public service facilities, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all projects covered by RA 6957, otherwise known as the "*Build-Operate-and-Transfer Law*," as amended by RA 7718 entitled "*An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by Private Sector, and for Other Purposes*," and those that involve private sector participation and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation,

regardless of the source of funding, and all local government infrastructure projects. These projects shall include, but not be limited to the following, all of which are intended for public use or purpose:

- (1) highways, including expressways, roads, bridges, interchanges, overpasses, tunnels, viaducts and related facilities;
 - (2) railways and mass transit facilities;
 - (3) port infrastructures, like piers, wharves, quays, storage handling and ferry services;
 - (4) airports and air navigation facilities;
 - (5) power generation, transmission and distribution facilities;
 - (6) radio/television broadcasting and telecommunications infrastructure;
 - (7) information technology infrastructure;
 - (8) irrigation, flood control and drainage systems;
 - (9) water and debris retention structures and dams;
 - (10) water supply, sanitation, sewerage and waste management facilities;
 - (11) land reclamation, dredging and development;
 - (12) industrial and tourism estates;
 - (13) government school buildings, hospitals, clinics and other buildings and housing projects;
 - (14) public markets and slaughterhouses; and
 - (15) other similar or related infrastructure works and services of the national or local government.
- i. **NEA** – the National Electrification Administration duly created and existing under PD No. 269, as amended;
- j. **NEA Equipment and Materials Price Index** - the most current "Equipment and Materials Price Index" issued by NEA to reflect the current costs of equipment and materials used by ECs. In the absence of an "Equipment and Materials Price Index" this shall refer to a list issued by NEA of electrical equipment and materials with specifications, standards and unit prices duly approved by NEA which is used as a guide or basis for the procurement and construction by ECs of distribution/subtransmission facilities;
- k. **Penalty** - an amount equivalent to the rate of ten percent (10%) of the Relocation Cost per day of delay;

- l. Proper Compensation* – the amount payable to an EC as compensation for relocating an Affected Facility, determined in accordance with Section 5 of this Joint Circular;
- m. RA 10531* – the “*National Electrification Administration Reform Act of 2013*”;
- n. RA 10752* – RA 10752 otherwise known as “*The Right-of-Way Act of 2015*”;
- o. Relocated Facility* – the new Facility which will be installed in replacement of the Affected Facility pursuant to the Relocation Agreement; and
- p. Right-of-Way* – a part or the entirety of a property, site, or location, with defined physical boundaries, used for a Government Project.

Section 4. Coordination on Projects – From programming and/or planning of a Government Project until an Affected Facility is relocated, the IA shall coordinate with the NEA and ECs to address all ROW concerns related to the Affected Facility such as, but not limited to, claims for compensation and determination of relocation site.

- a) Prior to the preparation of budget for a proposed Government Project, the IA shall inform the EC in writing that its Facility will be affected by a Government Project, copy furnished the DOE and NEA;
- b) Thereafter, the IA and the EC shall designate an authorized representative to conduct, among others, the actual joint survey and assessment of the Facility which may be possibly affected by the Government Project;
- c) Within a period not exceeding thirty (30) calendar days after the joint survey and assessment, the EC shall submit to the IA the proposed program of work for the Affected Facility with a cost estimate duly certified by NEA, and bill of materials thereof;
- d) After the EC submits its program of work, the IA shall determine within ten (10) calendar days the proper compensation based on the formula provided under Section 5 hereof;
- e) After the amount of compensation is determined, the IA and the EC shall execute within fifteen (15) calendar days a Relocation Agreement for the removal of Affected Facility with the following terms and conditions, among others:
 - i. Terms of payment of compensation for the Affected Facility;
 - ii. Details of the Affected Facility and approved relocation site;
 - iii. Project implementation and schedules of activities for the removal of Affected Facility;
 - iv. “Target Date” when the Affected Facility must be removed;
 - v. Remedy in case of default, refusal to relocate, disagreement or dispute;
- f) After the execution of a Relocation Agreement, the IA shall prepare the final program of work for the Government Project which shall include the amount of compensation due to the EC, for budgetary purposes;

- g) At least fifty percent (50%) of the cost of compensation as stated in the agreement must be paid by the IA to the EC prior to the removal of an Affected Facility, and
- h) In case of disagreement or failure of the EC and IA to execute a Relocation Agreement within fifteen (15) calendar days as required under Section 4(e), at least fifty percent (50%) of the cost of compensation computed in accordance with Section 5 may be deposited by the IA to the NEA. After the deposit has been received by the NEA, the IA shall notify the EC in writing of such deposit ("Deposit Notice"). The EC is required to remove the Affected Facility within seven (7) calendar days ("Removal Period") counted from the receipt of the Deposit Notice from the IA. In case the EC fails or refuses to remove the Affected Facility within the Removal Period, the NEA, with the assistance of the IA shall immediately relocate the Affected Facility at the expense of the EC, including the imposition of legal sanction, if any. In case the EC causes, but delays in, the removal of the Affected Facility, Section 6 shall apply.

Section 5. Guidelines for the Determination of Proper Compensation – The IA shall determine and pay the proper compensation to the EC for the cost of the removal of Affected Facility, based on the following formula:

Relocation Cost = Present Value of Relocated Facility, less Depreciation Cost of Affected Facility, plus Dismantling/Removal and Disposal Cost of Affected Facility.

Thus:

$$a = (b-c) + d$$

Where:

a – *Relocation Cost*

b – *Present Value of Relocated Facility*

c – *Depreciation Cost of Affected Facility*

d – *Dismantling/Removal and Disposal Cost of Affected Facility*

Where:

Present Value – is the cost of the Relocated Facility based on the NEA Equipment and Materials Price Index, which include cost of labor and equipment required for the construction/installation of the Relocated Facility.

Depreciation Cost – the equivalent cost of the service life of the Affected Facility, to be determined based on Section 1.7, Chapter III of the Accounting and Cost Allocation Manual (ACAM) for Electric Cooperatives prescribed under ERC Resolution No. 7, Series of 2012.

Cost of Removal/Dismantling and Disposal – cost of labor and equipment required to remove/dismantle the Affected Facility, including, where necessary, cost to transport the Affected Facility to the disposal or storage site.

Section 6. Period to Remove Affected Facility – The EC is obliged to promptly remove its Affected Facility from the right-of-way required for a Government Project by removing the same within the period stated in the Relocation Agreement. Unless the failure to relocate the Affected Facility is not caused by the willful or negligent act(s) of the EC, the IA shall deduct

an amount equivalent to the rate of ten percent (10%) of the Relocation Cost for the first day of delay. Thereafter, the rate shall be ten percent (10%) of the remaining balance of the Relocation Cost per day of delay until the Affected Facility is relocated.

Section 7. Refusal to Remove Facilities – In case the EC fails, without justifiable cause, to remove the Affected Facility after ten (10) days counted from the Target Date indicated in the Relocation Agreement, the NEA, with the assistance of the IA shall immediately relocate the Affected Facility at the expense of the EC, including the imposition of legal sanction, if any.

Section 8. Interruption Cost – The IA shall not be liable for any cost caused by the interruption, disruption, and/or disturbance of electric distribution by an EC to its consumer(s) by reason of the removal and/or relocation of the Affected Facility.

Section 9. Acquisition of Private Property – If the property where the Affected Facility is situated in the government's right-of-way, the EC shall bear the expenses for the acquisition of a private property necessary for the relocation of the Relocated Facility.

If the Affected Facility is situated in a private property necessary for the government project, the IA shall pay for the land in accordance with the provisions of RA 10752.

Section 10. Improvements in New EC's Facilities – Any variance from the technical components of the Relocated Facility from the Affected Facility shall be borne by the EC concerned, except if the improvement is a necessary consequence/effect of the relocation.

Section 11. Exemption from Government Fees – In relocating an Affected Facility, whether within a government or private property, the IA, DOE and NEA shall exempt the EC from payment of prescribed fees, if any, subject to submission of bonds when applicable.

Section 12. Allowable use of Government's Right-of-Way – After the effectivity of this Joint Circular, the EC may use government property for the construction, erection and implementation of distribution and/or subtransmission lines within the limits allowed by law, subject to proper coordination with the appropriate government agency.

Section 13. Clearing of Facilities from Existing Government Projects – Within one (1) year from the effectivity of this Joint Circular, the NEA and EC shall cause the removal and relocation of any improperly located facility in the government's right-of-way (Obstructing Facility), subject to payment of compensation provided in this Joint Circular.

After the lapse of the prescribed one-year period, the NEA shall demand from the concerned EC to relocate an Obstructing Facility at its own expense. Otherwise, the NEA, with the assistance of the DPWH, shall relocate the Obstructing Facility at the expense of the EC, including the imposition of legal sanction, if any.

The NEA shall cause the appropriations of funds needed to cover the expenses for the accomplishment of activities provided for by the preceding paragraph.

Section 14. Easement in favor of the Government - ECs shall strictly observe and maintain the easements in favor of the government provided in Section 40 of the Public Land Act, Section 16 of the Forestry Code of the Philippines and Article 51 of the Water Code of the Philippines. Should the EC, its successors or assignee fail, refuse or neglect to maintain the

easement stated therein, the NEA shall cause the removal/relocation of facilities which encumber government easements in the same manner set forth in Section 7 of this Joint Circular.

Section 15. Applicability of RA 10752 and its IRR – The provisions of RA 10752 and its IRR shall be applicable in cases not covered by this Joint Circular.

Section 16. Subjectivity to Other Laws – The above rules and regulations shall be subject to all pertinent laws, DPWH and DOE guidelines and issuances, and to COA rules and regulations.

Section 17. Separability Clause – Should any provision of this Joint Circular or any part hereof be declared invalid, the remaining provisions, insofar as they are separable from the invalid ones, shall be in full force and effect notwithstanding the invalidity of other provisions.

Section 18. Repealing Clause – All circulars and issuances not consistent with this Joint Circular shall be modified and repealed accordingly.

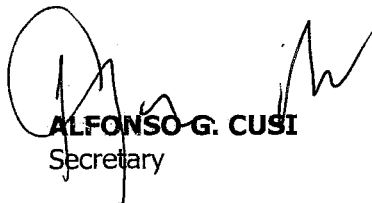
All pending claims pursuant to DOE Department Circular No. DC 2015-06-011 shall be resolved in accordance with the provisions of this Joint Circular.

Section 19. Effectivity and Publication – This Joint Circular shall be effective upon its publication in two (2) newspapers of general circulation and shall remain in effect until revoked.

Issued on JUL 10 2017, City of Taguig, Philippines.

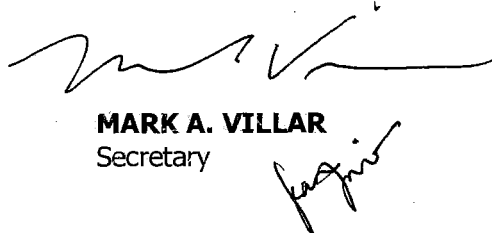
DEPARTMENT OF ENERGY

By:


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